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In re Application of
FALAKI, et al.
Serial No.: 10/597,647
PCT No.: PCT/JP05/01988
Int. Filing Date: 03 February 2005
Priority Date: 04 February 2004
Atty Docket No.: 00990096AA
For: SYSTEM AND METHOD FOR NETWORK
HANDOVER

DECISION ON PETITION

UNDER 37 CFR 1.47(a)

This decision is in response to the "Submission of Declaration And Power of Attorney Document; Submission of Assignment; And Petition Under 37 C.F.R §1.47(B)" filed 19 July 2007 in the United States Patent and Trademark Office (USPTO) to accept the application without the signature of co-inventor Veluppillai Manimohan. Applicant is advised that the petition is being considered under 37 CFR 1.47(a) as applicant has provided a declaration executed by the other co-inventor, Hamid Falaki. As authorized, the \$200.00 petition fee will be charged to deposit account number 50-2041.

BACKGROUND

On 03 February 2005, applicant filed international application PCT/JP05/01988 which claimed priority to a previous application filed 04 February 2004. A copy of the international application was transmitted to the USPTO from the International Bureau (IB) on 18 August 2005. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States was set to expire at midnight on 04 August 2006.

On 02 August 2006, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1).

On 19 July 2007, applicant filed the present petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the missing joint investor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own

behalf and on behalf of the non-signing joint inventor. Applicant has satisfied items 1, 3 and 4.

As to item (2), as stated in the Manual of Patent Examination Procedure (MPEP), Section 409.03(d) Proof of Unavailability or Refusal, "Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature." It does not appear from the filed exhibits that a complete set of application papers was mailed to Mr. Manimohan. The letter from Ms. Gardiner indicates that she is providing the inventor with two documents: a combined declaration and power of attorney and an assignment. Absent a showing that the inventor has been presented with a complete set of application papers it is not possible to accept the inventor's silence as a refusal.

In light of the above, it is not possible to grant applicant's petition at this time.

CONCLUSION

For the reasons stated above, applicant's petition under 37 CFR 1.47(a) is **DISMISSED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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